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2 HEARING re objection seeking disallowance of claim number 2114  
3 of N.Y. Hillside, Inc.

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16

17 ALSO PRESENT:

18 CLAIRE BURKE, Lincoln International

19 GEORGE COLES, Lincoln International

20 RICHARD FINKE, W.R. Grace & Co.

21 CHARLES JURGENS, Pro Se

22 MARK SHELNITZ, W.R. Grace & Co.

23 JASON SOLGANICK, Lincoln International

24

25

1 PROCEDURE DRAFTING

2 THE COURT: Okay. Then I suppose, before I should to  
3 turn to Specialty, I ought to ask about W.R. Grace as well,  
4 because I apologize, I had thought that everything was off on  
5 that, but apparently there is still one matter that has not  
6 been addressed. Ms. Makowski?

7 MS. MAKOWSKI: Yes, Your Honor. On the telephone is  
8 Jan Baer. She will be addressing the Hillside matter this  
9 morning.

10 THE COURT: All right, let me call W.R. Grace,  
11 01-1139. The list of participants I have by phone: Scott  
12 Baena, Janet Baer, Ari Berman, David Blabey, Deanna Boll,  
13 Thomas Brandi, Claire Burke, Elizabeth Cabraser, Kellie Cairns,  
14 Linda Casey, Gabriella Cellarosi, Richard Cobb, Jacob Cohn,  
15 George Coles, Leslie Davis, Elizabeth DeCristofaro, Martin  
16 Dies, John Donley, Michael Duggan, Terrance Edwards, Debra  
17 Felder, Richard Finke, Roger Frankel, Michael Giannotto, James  
18 Green, Sarah Harnett, Roger Higgins, Robert Horkovich, Richard  
19 Ifft, Charles Jurgens, Brian Kasprzak, Arlene Krieger, Michael  
20 Lastowki, Richard Levy, Edward Longosz, Eitan Melamed, Francis  
21 Monaco, Charles Nerko, David Parsons, Adam Paul, Carl  
22 Pernicone, Marc Phillips, Margaret Phillips, John Phillips,  
23 Mark Plevin, Francine Rabinovitz, Joseph Radecki, Alan Rich,  
24 Andrew Rosenberg, Ilan Rosenberg, Alan Runyan, Jay Sakalo,  
25 Alexander Sanders, Tancred Schiavoni, Darrel Scott, Mark

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1 Shelnitz, Stephen Shimshak, Jason Solganick, Gibson Solomons,  
2 Daniel Speights, Shayne Spencer, Theodore Tacconelli, David  
3 Turetsky, Edward Westbrook, Jennifer Whitener, Richard Wyron,  
4 Rebecca Zubaty.

5 Ms. Baer?

6 MS. BAER: Good morning, Your Honor.

7 THE COURT: Oh, I'm sorry, there are some here in  
8 court too. I apologize. Mr. Lockwood?

9 MR. LOCKWOOD: Your Honor, Peter Lockwood. I'm here  
10 on both Flintkote and Grace. I didn't get notice that the  
11 Flintkote hearing was cancelled, but I was here.

12 THE COURT: Okay. Thank you. Anyone else in court  
13 for Grace?

14 Okay, Ms. Baer?

15 MS. BAER: Good morning, Your Honor. Janet Baer on  
16 behalf of W.R. Grace. Your Honor, there's one matter on the  
17 agenda, I guess, sort of. We weren't quite sure what to do  
18 with this. As you might recall, N.Y. Hillside filed a proof of  
19 claim and the debtor objected to it. On January 14th Your  
20 Honor entered an order disallowing the claim. The reason for  
21 the disallowance of the claim was primarily because N.Y.  
22 Hillside was a California corporation, yet its response to our  
23 objection was filed by an individual pro se, who appeared on  
24 the phone to argue the merits.

25 Your Honor held, of course, that a corporation cannot

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1 be represented pro se, it must have counsel. And you  
2 disallowed the claim without prejudice to N.Y. Hillside's right  
3 to reassert the claim upon a proper motion being brought by  
4 N.Y. Hillside by counsel.

5 What happened next, Your Honor, is shortly after that,  
6 a gentleman named Charles Jurgens, who was the gentleman who  
7 had appeared pro se the last time this was up, filed a notice  
8 of dissolution of claimant N.Y. Hillside, and appearance pro se  
9 by successor-in-interest. Mr. Jurgens filed this apparently  
10 with the Court. We got a copy of it. And it did not appear on  
11 the docket, but it clearly had been sent to the courthouse.

12 That document showed a secretary of state copy of a  
13 copy from California, indicating that N.Y. Hillside had been  
14 dissolved in October of 2003. The certificate of dissolution,  
15 again a copy of a copy, indicated that the known assets of N.Y.  
16 Hillside had been distributed to persons entitled thereto.  
17 That dissolution certificate was signed by Mr. Jurgens as a  
18 director.

19 Mr. Jurgens attached that to this notice of  
20 dissolution he filed with the Court here on January 10th of  
21 2011, and indicated on there that he, in fact, is the  
22 successor-in-interest on the N.Y. Hillside claim. However,  
23 Your Honor, there's no documentation that shows he's the  
24 successor-in-interest to that claim, purchased that claim or  
25 has distributed the claim.

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1                   We weren't quite sure what to do with this. Mr.  
2                   Jurgens called our office a number of times trying to find out  
3                   what was going on, whether this would be put on the agenda. I  
4                   frankly don't know, Your Honor, if you consider this to be an  
5                   appropriate motion to reopen the claim. But out of an  
6                   abundance of caution and given Mr. Jurgens is pro se, we felt  
7                   that we would put it on the agenda, and at least address  
8                   procedurally at, first, whether or not it should be here and  
9                   should be heard, and then, of course, if Your Honor wants to go  
10                   forward and hear the merits of our objection, we believe that  
11                   the claim, in fact, should remain disallowed, that there are no  
12                   merits to the claim, and we're happy to address that.

13                   But I think initially, Your Honor has to decide  
14                   whether or not there's in fact an appropriate motion to reopen  
15                   the claim, and secondly, whether or not there's any evidence in  
16                   the record at this point, that Mr. Jurgens, who's appearing  
17                   here pro se, in fact is the owner of this claim.

18                   THE COURT: Well, no, I don't think any evidence of  
19                   that fact has been submitted, and I'm not aware that any motion  
20                   to reopen has been filed. So at this point, I don't think  
21                   there's anything before me.

22                   MS. BAER: Your Honor, from the debtors' perspective,  
23                   we certainly agree. And again, given it's a pro se document  
24                   that came in, we always end up putting those sorts of things on  
25                   the agenda.

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1           I believe Mr. Jurgens is on the phone if he wants to  
2 address this. Otherwise I would suggest, Your Honor, that the  
3 order stand as the claim being disallowed, and this be done  
4 with.

5           THE COURT: Mr. Jurgens, are you on?

6           MR. JURGENS: Yes, I am here. Thank you. Not being  
7 of counsel here, I maybe am short of some things. But the fact  
8 is, I am the successor-in-interest. I don't know how we prove  
9 that. And the claim, I think, is quite legitimate. I have no  
10 reason why -- I don't understand why it's being rejected.

11           THE COURT: Well, it was rejected initially because  
12 the corporation was not represented by counsel.

13           MR. JURGENS: Yes, I understand --

14           THE COURT: And then you filed a certificate that said  
15 in fact there is no corporation, and that the assets of the  
16 corporation have been distributed. But there is nothing that  
17 tells me to whom the assets were distributed or what the assets  
18 were that were distributed. So first of all, I don't know  
19 that.

20           Secondly, there is no motion for me to reconsider this  
21 claim, in any event. And I'm sure that I said that a motion of  
22 some sort had to be filed, because it has to be teed up in some  
23 fashion that lets me know what the issues are. And at the  
24 moment, I don't even know what the issues are. So until --

25           MR. JURGENS: Well, I did file --

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1                   THE COURT: -- I have some motion. Well, I didn't get  
2 a motion filed. And I know that you've contacted my staff many  
3 times, Mr. Jurgens. I've not spoken with you, but I know my  
4 staff has, and I know from what they've told me that they've  
5 told you, you have to file a motion.

6                   So either, sir, you've got to file a motion or you've  
7 got to get counsel to represent you to do it. But it has to be  
8 done in a procedurally correct fashion so that I have  
9 jurisdiction to adjudicate this issue, which right now, I don't  
10 feel I do.

11                  MR. JURGENS: Well, if I could get one more word in?  
12 Thank you. I did contact counsel. And I spoke to Delaware  
13 counsel, as a matter of fact. And they -- the response I  
14 received was that what I had filed indicating the corporation  
15 had been dissolved is true and correct, and that the fact is,  
16 there is no corporation. And if that's the case, they weren't  
17 clear as to whether I could represent it or not. That's where  
18 I'm sitting here, in no-man's-land, not sure what to do.

19                  THE COURT: Well, I'm not permitted to give you legal  
20 advice, Mr. Jurgens, but if there is no corporation, there's no  
21 corporate claim.

22                  MR. JURGENS: Right.

23                  THE COURT: If you're the successor, then somehow or  
24 other, you're going to have to establish that you are, because  
25 otherwise, with a dissolved corporation, I don't know what the

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1 claim would be, since the corporation's been dissolved since  
2 2003. Ms. Makowski's here. One second.

3 Ms. Makowski?

4 MS. MAKOWSKI: Yes, Your Honor. I just wanted to  
5 address the one point that Mr. Jurgens contacted Delaware  
6 counsel. If he spoke to anyone, that would be Jamie O'Neill in  
7 our office, as you know. Mr. O'Neill is traveling today and  
8 was not able to attend. I will confirm, if the Court wishes,  
9 any conversations that he had with Mr. Jurgens, but I don't  
10 anticipate that that was the substance of their conversation.

11 THE COURT: Well, I'm sorry, Mr. Jurgens. I thought  
12 you were talking about Delaware counsel to represent your  
13 interest?

14 MR. JURGENS: That's -- well, I -- that's right. I  
15 was trying to figure out how to do that. Then when I discussed  
16 it with counsel, and the corporation had been dissolved, they  
17 suggested, which I did send this form in on February the 3rd,  
18 indicating that the corporation had been dissolved and asking  
19 the Court to treat me on a pro se basis.

20 THE COURT: I understand that that's what you've done.  
21 I still need a motion to take a look at this objection on the  
22 merits. Because with this corporation dissolved, the  
23 corporation filed the claim, as I understand it, Mr. Jurgens,  
24 you didn't.

25 So you've got to contact counsel to get it into a

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1 manner that is procedurally proper. I'm not permitted to give  
2 you legal advice. I can't tell you how to do it. You have to  
3 figure that out with your own counsel.

4 MR. JURGENS: I see. So if I understand you  
5 correctly, I have to be able to prove that I'm a successor-in-  
6 interest in this respect.

7 THE COURT: You're going to have to get the matter  
8 procedurally in a posture that I can adjudicate it. And you  
9 should discuss that matter with counsel, because it's something  
10 on which you may need legal advice. That's all I'm permitted  
11 to tell you, Mr. Jurgens.

12 MR. JURGENS: Okay, thank you. I appreciate that.

13 THE COURT: Okay. As I said when I denied this  
14 objection in the first place, it's without prejudice. I don't  
15 have anything before me. If I get something before me, Ms.  
16 Baer, then yes, please put it on the agenda. But as of now, I  
17 don't have a motion.

18 MS. BAER: Thank you, Your Honor. And just to make it  
19 very clear, we will not put anything on the agenda unless it is  
20 a proper motion. Again, with pro se letters, we sometimes do  
21 this out of an abundance of caution, but we appreciate Your  
22 Honor's dealing with it this way, and we will wait and see.

23 THE COURT: Okay. Thank you. Anything else in Grace?

24 MS. BAER: No, Your Honor. That's the only matter  
25 that was on the agenda --

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1 THE COURT: All right.

2 MS. BAER: -- that's left.

3 THE COURT: Thank you.

4 MS. BAER: Thank you, Your Honor.

5 THE COURT: Grace parties, anyone who's not interested  
6 in what's going to happen in Specialty Products are free to  
7 disconnect. And I think Flintkote already has disconnected.

8 (Whereupon these proceedings were concluded at 10:06 AM)

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2 C E R T I F I C A T I O N

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4 I, Penina Wolicki, certify that the foregoing transcript is a  
5 true and accurate record of the proceedings.

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AAERT Certified Electronic Transcriber CET\*\*D-569

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Date: May 20, 2011

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